

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Wade Stephney, Jr.,)
Plaintiff,) C/A No. 7:07-0046-MBS-BHH
vs.)
Prison Health Service, Inc.; Richland)
County Administration and Government;)
and Alvin S. Glenn Detention Center,)
Defendants.)

)

O R D E R

Plaintiff Wade Stephney, Jr. is an inmate in custody of the South Carolina Department of Corrections. At the time of the underlying events, he was a pretrial detainee housed at the Alvin S. Glenn Detention Center in Columbia, South Carolina. Plaintiff brings this action pursuant to 28 U.S.C. § 1983, alleging that his constitutional rights have been violated in various respects.

This matter is before the court on motion of Defendants Richland County and the Alvin S. Glenn Detention Center to dismiss or, in the alternative, to stay this action, which motion was filed February 6, 2007. These Defendants contend that the allegations of the within action are duplicative of the allegations of a pending case, Stephney v. Anderson, C/A No. 8:06-2157-MBS. On February 7, 2007, an order was issued pursuant to Roseboro v. Garrison, 528 F.2d 309 (4th Cir. 1975), advising Plaintiff of the summary judgment procedure and the possible consequences if he failed to respond adequately. Plaintiff filed a response in opposition on March 12, 2007. On March 14, 2007, Defendant Prison Health Services filed a motion to dismiss or, in the alternative, to stay, asserting the identical argument advanced by Defendants Richland County and the Alvin S. Glenn Detention Center. A second Roseboro order was issued on March 15, 2007. Plaintiff filed a response in

opposition on March 20, 2007.

Also before the court is Plaintiff's motion for summary judgment filed March 29, 2007. No Defendant responded to Plaintiff's motion.

In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02, D.S.C., this matter was referred to United States Magistrate Judge Bruce H. Hendricks for pretrial handling. On May 21, 2007, the Magistrate Judge issued a Report and Recommendation in which she noted that the court had dismissed C/A No. 8:06-2157-MBS without prejudice on April 3, 2007. She therefore recommended that Defendants' motions to stay or dismiss be denied as moot. The Magistrate Judge further recommended that Plaintiff's motion for summary judgment be denied. Plaintiff filed objections to the Report and Recommendation on May 31, 2007.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility for making a final determination remains with this court. Mathews v. Weber, 423 U.S. 261, 270 (1976). The court is charged with making a de novo determination of any portions of the Report and Recommendation to which a specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or may recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1).

The court concurs with the Magistrate Judge's determination that Defendants' motions to dismiss should be denied as moot. With respect to Plaintiff's motion for summary judgment, the Magistrate Judge properly noted that a party seeking summary judgment must produce sufficient evidence to show that judgment on the pleadings is appropriate, and that there are no genuine issues for trial. In both his motion for summary judgment and his objections, Plaintiff simply reiterates the

uncorroborated allegations contained in the complaint. Plaintiff's motion for summary judgment is denied.

The court has carefully reviewed the record and concurs in the recommendation of the Magistrate Judge. The court adopts the Report and Recommendation and incorporates it herein by reference. Accordingly, Defendants' motions to dismiss or, in the alternative, to stay (Entries 10, 24) are **denied as moot**. Plaintiff's motion for summary judgment (Entry 29) is **denied**. The case is recommitted to the Magistrate Judge for further pretrial handling.

IT IS SO ORDERED.

/s/ Margaret B. Seymour
United States District Judge

Columbia, South Carolina

July 26, 2007